

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

WILLIAM BUTLER,)	
)	
Plaintiff,)	Case No.: 2:10-cv-01297-GMN-PAL
vs.)	
)	ORDER
MGM MIRAGE, et al.,)	
)	
Defendants.)	
)	

Pending before the Court is Defendant MGM Mirage's Motion to Dismiss Plaintiff's Second Cause of Action (ECF No. 5), Plaintiff William Butler's Response (ECF No. 10), and Defendant's Reply (ECF No. 12). For the reasons that follow, Defendant's Motion is STAYED pending the resolution of the question of law certified to the Nevada Supreme Court by this Court's August 9, 2010 Order (ECF No. 20) in 2:10-cv-00303-GMN-LRL, *Robertson v. Wynn Las Vegas LLC*.

I. BACKGROUND

Plaintiff William Butler (“Plaintiff”) was employed by Defendant MGM Mirage (“Defendant”) at its contact center for room reservations. During his employment, Plaintiff allegedly suffered from severe migraine headaches, light sensitivity, weakness, nausea and/or vomiting. These afflictions caused him to seek leave under the Family and Medical Leave Act (“FMLA”) three to four times a month throughout his tenure working for Defendant. Plaintiff also alleges that he requested intermittent FMLA leave for the period from January 16, 2009 to January 15, 2010 and that Defendant approved that leave. However, on January 22, 2009, Plaintiff was notified by Defendant that he would be suspended pending investigation for exceeding his allotted attendance points

1 regardless of his approved FMLA leave. Then, on January 26, 2009, Defendant's human
2 resources director notified Plaintiff that his FMLA paperwork was incomplete and
3 Plaintiff had to return to the neurologist to complete the paperwork. Plaintiff then
4 returned to the neurologist, completed the paperwork, and faxed it to Defendant.
5 Thereafter, on January 27, 2009, Defendant allegedly terminated Plaintiff for absence,
6 regardless of the completed FMLA paperwork that was submitted on the same day. This
7 lawsuit followed, in which Plaintiff sued Defendant under two theories: (1) violation of
8 FMLA, and (2) negligent hiring, training, and supervision.

9 Defendant's Motion to Dismiss only concerns the second cause of action
10 contained in the Complaint: negligent hiring, training, and supervision. Defendant
11 contends that, under Nevada law, a Plaintiff can only prevail on such a claim if he was
12 either threatened with physical violence or suffered physical injury as a result of the
13 negligent hiring, training, and supervision. (Mot. 1, ECF No. 5.) Because the Complaint
14 contains no allegations that Plaintiff was threatened with physical violence or suffered
15 physical injury as a result of Defendant's alleged negligence, Defendant argues that
16 Plaintiff's claim fails as a matter of law.

17 **II. DISCUSSION**

18 The principal question before this Court is whether Nevada law requires a plaintiff
19 to show that he was threatened with physical violence or suffered physical injury as a
20 result of the defendant's negligent hiring, training, and supervision. If such a showing is
21 required, then Defendant's Motion will likely be granted. If such a showing is not
22 required, then Defendant's Motion will probably be denied.

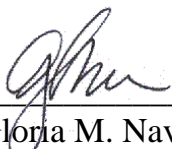
23 However, the Court will refrain from addressing the question at this time. As the
24 Court discussed at length in its August 9, 2010 Order (ECF No. 20) in 2:10-cv-00303-
25 GMN-LRL, *Robertson v. Wynn Las Vegas LLC*, which was issued four days after

1 Defendant filed its Motion to Dismiss in this case, the Nevada Supreme Court has never
2 addressed this question, and the courts of this District are in disagreement regarding its
3 answer. Accordingly, the Court has certified to the Nevada Supreme Court a question
4 closely approximating the one raised in this case,¹ and will wait for a response from the
5 Supreme Court before addressing this state law question. The Court therefore stays this
6 Motion until the resolution of the question of law certified to the Nevada Supreme Court
7 by this Court's August 9, 2010 Order (ECF No. 20) in 2:10-cv-00303-GMN-LRL,
8 *Robertson v. Wynn Las Vegas LLC*, at which time the Court may request further briefing,
9 if appropriate.

10 CONCLUSION

11 IT IS HEREBY ORDERED that Defendant's Motion to Dismiss is STAYED
12 pending the resolution of the question of law certified to the Nevada Supreme Court by
13 this Court's August 9, 2010 Order (ECF No. 20) in 2:10-cv-00303-GMN-LRL,
14 *Robertson v. Wynn Las Vegas LLC*.

15 DATED this 17th day of November, 2010.

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18 _____
19 Gloria M. Navarro
20 United States District Judge
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25 ¹ Specifically, the Court certified the following question to the Nevada Supreme Court: "Does a claim for Negligent Training and Supervision in Nevada require that the plaintiff suffer physical harm as a result of the employer's negligence in training or supervising the employee that terminated the plaintiff?"